

Claimant, a weekend supervisor for respondent's residential care facility, was injured February 17, 1995 when a chair she was sitting on collapsed. Respondent, citing K.S.A. 44-501(c), argues claimant was not disabled for a period of at least one week from earning full wages at the work at which she was employed and therefore disability benefits are precluded. The ALJ found claimant missed three weeks of work and awarded benefits. Whether claimant's accidental injury disabled her for at least one week and, if so, the nature and extent of claimant's disability are the two issues raised by respondent. Claimant also raises nature and extent of disability as an issue and, in addition, contends the ALJ failed to award temporary total disability for the three weeks of work that claimant missed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs, the Appeals Board finds the Award by the ALJ should be modified to include an award of temporary total disability benefits but should otherwise be affirmed. The Board does so for the reasons stated in the findings and conclusions expressed in the Award by the ALJ. The Board hereby approves those findings and conclusions and adopts them as its own. Because the three 40-hour work weeks claimant was temporarily and totally disabled were not consecutive, claimant is not entitled to temporary total disability compensation for the first week of disability. K.S.A. 44-510c(b)(1).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler dated March 31, 1998 should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Ruby R. Rauschenburg, and against the respondent, Cedar House, Inc., and its insurance carrier, American States Insurance Company, for an accidental injury which occurred February 17, 1995, and based upon an average weekly wage of \$349.29 for 2 weeks of temporary total disability compensation at the rate of \$232.87 per week or \$465.74, followed by 49.80 weeks at the rate of \$232.87 per week or \$11,596.93, for a 12% permanent partial general disability, making a total award of \$12,062.67 which is ordered paid in one lump sum less any amounts previously paid.

The Appeals Board adopts all remaining orders contained in the Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Gregory D. Worth, Lenexa, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director